

1 BRIAN J. ROBBINS  
brobbins@robbinsumeda.com  
2 GEORGE C. AGUILAR  
gaguilar@robbinsumeda.com  
3 ASHLEY R. PALMER  
apalmer@robbinsumeda.com  
4 ROBBINS UMEDA LLP  
600 B Street, Suite 1900  
5 San Diego, California 92101  
Telephone: 619.525.3990  
6 Facsimile: 619.525.3991

7 MICHAEL GOLDBERG  
info@glancylaw.com  
8 GLANCY BINKOW & GOLDBERG LLP  
1925 Century Park East, Suite 2100  
9 Los Angeles, California 90067

10 Attorneys for Plaintiffs  
Evelyn Sabbag, Vincent Cilurzo, Audrey Cilurzo,  
11 Donald Triskett, Daniel Jaquez, and John R. Klein

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 EVELYN SABBAG, derivatively on Behalf of  
AKEENA SOLAR, INC.

16 Plaintiff,

17 v.

18 BARRY CINNAMON, GARY EFFREN,  
19 EDWARD ROFFMAN, JON WITKIN,  
20 GEORGE LAURO, PRADEEP JOTWANI, and  
DAVID WALLACE

21 Defendants,

22 and

23 AKEENA SOLAR, INC., a Delaware  
corporation,

24 Nominal Defendant.  
25

Lead Case No.: 10-cv-002735-MMC

STIPULATION AND [~~PROPOSED~~]  
ORDER RE VOLUNTARY DISMISSAL  
OF COMPLAINT (FRCP 23.1(c),  
41(a)(1))

1 Plaintiffs Evelyn Sabbag, Vincent and Audrey Cilurzo, Donald Triskett, Daniel Jaquez, and  
2 John R. Klein (collectively, "Plaintiffs"), Nominal Defendant Akeena Solar, Inc. ("Akeena"), and  
3 Defendants Barry Cinnamon, Gary Effren, Edward Roffman, Jon Witkin, George Lauro, Pradeep  
4 Jotwani, and David Wallace, by and through their undersigned counsel, hereby stipulate as follows:

5 WHEREAS, on June 22, 2010, Plaintiff Sabbag filed a shareholder derivative complaint  
6 alleging claims for breach of fiduciary duty, abuse of control, mismanagement, waste of corporate  
7 assets, unjust enrichment, and impermissible insider trading. Similar shareholder derivative complaints  
8 were subsequently filed in the same court under the captions: *Cilurzo v. Cinnamon, et al.*, Case No.  
9 5:10-CV-02806-JF; *Triskett v. Cinnamon, et al.*, Case No. 5:10-CV-02992-JF; *Jaquez v. Cinnamon, et*  
10 *al.*, 5:10-CV-03020-JF; and *Klein v. Cinnamon, et al.*, Case No. 5:10-CV-03387-JF;

11 WHEREAS, in an Order dated August 25, 2010, the Court consolidated the *Sabbag, Cilurzo,*  
12 *Triskett, Jaquez, and Klein* actions for all purposes under File No. 5:10-CV-02735-JF (HRL)  
13 ("Consolidated Action");

14 WHEREAS, a shareholder derivative action captioned *Dulgarian v. Cinnamon, et al.*, Case No.  
15 1-10-CV-173351 ("State Derivative Action"), was filed in California Superior Court for the County of  
16 Santa Clara ("State Court") on May 28, 2010, arising out of the same facts and asserting substantially  
17 the same allegations as the Consolidated Action;

18 WHEREAS, on September 10, 2010, Plaintiffs in the Consolidated Action filed a Verified  
19 Consolidated Shareholder Derivative Complaint asserting State causes of action for breach of fiduciary  
20 duty, unjust enrichment, and waste of corporate assets, and a federal claim against the director  
21 Defendants for violation of Section 14(a) of the Securities Exchange Act of 1934;

22 WHEREAS, on September 17, 2010, Defendants moved to dismiss the federal securities claim  
23 as time-barred. Defendants also moved to dismiss, or in the alternative to stay, the State law causes of  
24 action in light of the pending State Derivative Action;

1 WHEREAS, on October 7, 2010, the Court entered an Order appointing Robbins Umeda LLP  
2 and Glancy Binkow & Goldberg LLP as co-lead counsel;

3 WHEREAS, on December 10, 2010, the Court entered an Order dismissing Plaintiffs' Section  
4 14(a) claim as time-barred and staying the Consolidated Action in light of the pending State Derivative  
5 Action;

6 WHEREAS, the parties in the State Derivative Action reached an agreement to settle the action  
7 on behalf of all Akeena shareholders, including Plaintiffs in the Consolidated Action, and to seek  
8 approval for the settlement in the State Court. In connection with this settlement, Akeena has agreed to  
9 implement and maintain certain corporate governance measures;

10 WHEREAS, on September 20, 2011, plaintiffs in the State Derivative Action filed an unopposed  
11 motion seeking: (1) preliminary approval of the terms of the proposed settlement; (2) approval of the  
12 form and manner of providing notice to Akeena shareholders (the "Notice"); and (3) a hearing for the  
13 State Court to consider final approval of the settlement;

14 WHEREAS, a copy of the Stipulation of Settlement ("Stipulation") is attached hereto as Exhibit  
15 1;

16 WHEREAS, on October 7, 2011, the State Court granted preliminary approval of the settlement  
17 in the State Derivative Action;

18 WHEREAS, in accordance with the Stipulation and preliminary approval order, Akeena caused  
19 the Notice to be published in the *Investor's Business Daily* national financial newspaper and also filed a  
20 copy of the Notice with the U.S. Securities and Exchange Commission;

21 WHEREAS, Plaintiffs in the Consolidated Action did not object to the settlement in the State  
22 Derivative Action or to the Notice;

1 WHEREAS, on January 27, 2012, the State Court granted final approval to the settlement and  
2 entered an order of dismissal on the merits and with prejudice, captioned Final Judgment and Order of  
3 Dismissal with Prejudice ("Final Judgment");

4 WHEREAS, a copy of the Final Judgment is attached hereto as Exhibit 2;

5 WHEREAS, the parties agree that during the course of the litigation of the Consolidated Action,  
6 including all actions that comprise the Consolidated Action, the parties and their respective counsel  
7 acted in good faith and abided by and fulfilled their obligations under Rule 11 of the Federal Rules of  
8 Civil Procedure; and

9 WHEREAS, the parties agree that it is in the best interests of Akeena and its shareholders to  
10 seek dismissal of the Consolidated Action.

11 THEREFORE, IT IS HEREBY STIPULATED AND REQUESTED by the parties, by and  
12 through their undersigned attorneys of record, as follows:

- 13
- 14 1. Pursuant to Federal Rules of Civil Procedure sections 23.1(c) and 41(a)(1), the parties  
15 respectfully request that the Court enter the attached Order dismissing the Consolidated Action.
  - 16 2. The parties agree that each side shall bear its own attorneys' fees, costs, and expenses.
  - 17 3. No notice of this dismissal shall be required to be given to Akeena shareholders.
- 18

19 DATED: February 17, 2012

20 ROBBINS UMEDA LLP  
21 BRIAN J. ROBBINS  
22 GEORGE C. AGUILAR  
23 ASHLEY R. PALMER

24 *s/ George C. Aguilar*  
25 GEORGE C. AGUILAR

26 600 B Street, Suite 1900  
27 San Diego, CA 92101  
28 Telephone: (619) 525-3990  
Facsimile: (619) 525-3991

GLANCY BINKOW & GOLDBERG LLP  
MICHAEL GOLDBERG  
MARC GODINO  
1925 Century Park East, Suite 2100

Los Angeles, CA 90067  
Telephone: (310) 201-9150  
Facsimile: (310) 201-9160

*Co-Lead Counsel for Plaintiffs*

DATED: February 17, 2012

MORRISON & FOERSTER LLP  
JORDAN ETH  
JUDSON E. LOBDELL  
CRYSTAL MCKELLAR

s/ Judson E. Lobdell  
JUDSON E. LOBDELL

425 Market Street  
San Francisco, CA 94105  
Telephone: (415) 268-7000  
Facsimile: (415) 268-7522

*Attorneys for Defendants Barry Cinnamon, Gary  
Effren, Edward Roffman, Jon Witkin, George  
Lauro, David Wallace, Pradeep Jotwani, and  
Akeena Solar, Inc.*

E-filing attestation: I, George C. Aguilar, am the ECF User whose ID and password are being used to file this Stipulation and [Proposed] Order Re Voluntary Dismissal of Complaint (FRCP 23.1(c), 41(a)(1). In compliance with General Order 45, X.B., I hereby attest that Judson E. Lobdell has concurred in this filing.

Dated: February 17, 2012

s/ George C. Aguilar  
GEORGE C. AGUILAR

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**ORDER**


The Court, having considered the above stipulation of the parties and the exhibits thereto, and good cause appearing therefore, HEREBY ORDERS THAT:

The Court hereby directs the Clerk of the Court to enter the dismissal of the above-captioned Consolidated Action pursuant to Federal Rule of Civil Procedure 41(a). The parties shall bear their own attorneys' fees, costs, and expenses incurred in connection with this action. ~~No notice of the dismissal shall be required to be given to Akeena's shareholders.~~

The Court finds the Notice of Settlement filed in Santa Clara Superior Court Case No. 10-CV-173351, which Notice informed the shareholders of Akeena Solar, Inc. of the terms of the proposed settlement of that action, and which settlement expressly included the voluntary dismissal of the above-titled federal action, constitutes sufficient notice under Rule 23.1(c) of the Federal Rules of Civil Procedure and, accordingly, no further notice of this dismissal need be given.

IT IS SO ORDERED.

Dated: February 23, 2012

  
HONORABLE MAXINE M. CHENEY  
UNITED STATES DISTRICT COURT JUDGE